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Legal Deptt

G. BRANCH

Subject:— Opinion on the Indian Insurance Act-1951

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C O N T E N T S

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Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions under the Indian Insurance Act.	
1.	G.196 23-5-51	Re: Engagement by G.P.O. of the Western India Shipping and Transport Co. as their transpartners of foodgrains by country craft. Whether the calim in respect of loss of food grains in the sea can be successfully made either against the transporters or the Sentinal Assurance Co.	1-8

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The Director of Grain Purchase's Office appears to be of the view that the vessel in question did not sink due to stress of weather, but sank on account of the breaking of the bottom plank. It therefore feels that the loss was purely accidental and the Sentinel Assurance Co. Ltd., with which the goods were insured is not liable.

It is true that the loss of the ship was not due to the stress of weather but was due to the breaking of the bottom plank and therefore the Company is not liable under the 'perils of the sea' caluse of the policy.

As pointed out by the Western India Shipping and Transport Company, in their letter at page 71 ante, the policy, however, contains the F.P.A. caluse (free from average caluse)which provides as follows:-
"Insured F.P.A. Including Jettison As Per Our Printed Caluse."

The printed caluse runs as follows:-
" Warranted free from average unless the Nativa Craft be sunk or burnt but to cover the risk of jettison if necessitated by stress of weather only. Should the Native Craft run aground or strand, the liability under the policy shall entirely cease from the moment of running aground or stranding except in respect of total loss by total loss of the Native Craft."

The meaning of the expression 'warrant d free from average' is that the underwriter with respect to the article covered by the policy stipulates to be free from liability for any extent of deterioration which does not amount to the total loss. Therefore, the insurance upon the article in question warranted free from average is equivalent to an insurance against its total loss only, actual or constructive. From the report of the Officer appointed under the Indian Merchant Shipping Act, 1923, at pages 115-117 ante it appears that the ship K Hariprasad sank in the sea near Harnai Fort at about 9 A.M. on 9th March 1949. This report read with the report of the

Western India Shipping and Transport Company and of the Mamlatdar at pages 1 and 3 ante respectively indicates that the vessel Hariprasad sank on the 9th March 1949 with all the 300 bags of rice therein. The company is therefore liable under the F.P.A. caluse aforesaid. The question of liability of the said transport Company has not therefore been examined.

The Insurance Company in its letter at page 55 ante, while denying its calim under the policy, has not referred to the specific provisions of the policy under which the denial is based. Before, therefore, proceeding in the matter further, the Company may be requested to point out the provisions of the policy under which it is contained that the calim cannot be entertained and to consider F.P.A. caluse.

Sd/- B.D. Mirchandani

oc.

Additional Secretary to Government.

U.R. to D.C.S. (Acts.)., No. C-196, dated the 23rd Mary 1951

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